

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

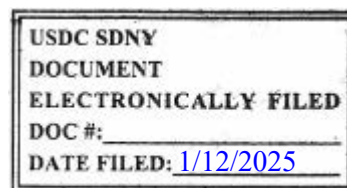
ROSARINA ROSARIO,

Plaintiff,

-v.-

MAJESTIC RESTAURANT INC. d/b/a  
MAJESTIC DOMINICAN RESTAURANT et  
al.,

Defendants.



23 Civ. 11042 (JHR)

ORDER

JENNIFER H. REARDEN, District Judge:

On December 20, 2023, Plaintiff Rosarina Rosario filed the Complaint in this action. ECF No. 1. On January 5, 2024, Plaintiff served Defendants Henry Rodriguez and Majestic Restaurant Inc. by way of personal service and service on an authorized officer, respectively. ECF Nos. 6, 7; *see* Fed. R. Civ. P. 4(e), (h); N.Y. C.P.L.R. 308(1), 311(a)(1). Defendants' deadline to respond to the Complaint was therefore January 26, 2024. *See* Fed. R. Civ. P. 12(a)(1)(A)(i) ("A defendant must serve an answer . . . within 21 days after being served with the summons and complaint."). Neither Defendant responded to the Complaint or otherwise appeared by that date. On March 29, 2024, Plaintiff obtained a Certificate of Default as to both Defendants. ECF No. 12. On April 2, 2024—Plaintiff not having moved for default judgment—the Court issued an Order to Show Cause why the action should not be dismissed for failure to prosecute. ECF No. 13. On April 18, 2024, Plaintiff filed a motion for default judgment. ECF No. 17. On May 30, 2024, counsel for Defendants appeared and moved to vacate the Certificate of Default. ECF No. 21. Plaintiff thereafter filed a letter stating that she does not oppose Defendants' motion. ECF No. 24.

Upon consideration of the parties' papers, Defendants' unopposed motion to vacate the Certificate of Default is GRANTED and Plaintiff's motion for default judgment is thus DENIED


as moot. *See Phoenix Fashion, Inc. v. Saadia Grp. LLC*, No. 23 Civ. 5788 (LJL), 2024 WL 1555265, at \*3 (S.D.N.Y. Apr. 10, 2024) (“It is well established that once the certificate of default has been vacated, the pending motion for default judgment is moot as a matter of law.” (alterations and emphasis omitted) (quoting *Moore v. NYC Health + Hosp.*, No. 18 Civ. 496 (JPO) 2023 WL 4172738, at \*1 (S.D.N.Y. June 26, 2023))).

By **February 3, 2025**, Defendants shall respond to the Complaint. In addition, the parties are directed to participate in early mediation through the District’s Mediation Program, in accordance with this Court’s established practices governing cases brought under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* An Order with further details regarding the mediation will issue.

The Clerk of Court is directed to terminate ECF Nos. 17 and 21.

SO ORDERED.

Dated: January 12, 2025  
New York, New York

  
\_\_\_\_\_  
JENNIFER H. REARDEN  
United States District Judge